HO TONG CHEONG & ORS. v. OVERSEA CHINESE BANKING CORPORATION LIMITED

[P.C. (Lord Guest, Lord Upjohn & Lord Pearson) January 15, 1969]

[Privy Council Appeal No. 22 of 1967]

Landlord and Tenant — Building operation by tenants on controlled premises in breach of statute — "Knowingly" committing breaches — Exposing landlord to penalty, fine or forfeiture — Action for recovery of premises by landlord — Municipal Ordinance (S.S. Cap. 133), s. 144(7), (10) and (12) — Building by-laws — Control of Rent Ordinance (Cap. 242), ss. 14 and 15(1)(h).

In this case the respondents had claimed possession of the premises from the appellants on the ground that they had knowingly committed breaches of the Municipal Ordinance and the building by-laws and had thereby exposed the respondents to a penalty or fine. It was not in dispute that the appellants had commenced and completed building operations on the premises without submitting a plan to the proper authority and that they had contravened section 144(7) of the Municipal Ordinance and the building by-laws. An order for possession was made against the appellants as the learned trial judge found that the appellants had "knowingly" permitted breaches of the Municipal Ordinance and that the respondents were not precluded by the Control of Rent Ordinance from obtaining possession. An appeal to the Federal Court was dismissed ([1967] 2 M.L.J. 70) and the appellants appealed to the Privy Council.

Held, dismissing the appeal: (1) in order to show that the appellants had "knowingly" committed the breach it was not necessary for the respondents to show that the appellants knew the precise section of the Municipal Ordinance of which they were alleged to be in breach or indeed that it was the Municipal Ordinance; it is sufficient if it is shown that the tenant knew that his conduct is in breach of some law affecting the regulations of building operations in Singapore and that his conduct in fact is in breach of the Municipal Ordinance;

(2) the exposure referred to in section 15(1)(h) of the Control of Rent Ordinance is a qualification of the breach and all that is necessary for the landlord to show is that under the terms of the Ordinance the breach at the time it was committed exposed the landlord to a penalty.

PRIVY COUNCIL.

J.G. Le Quesne, Q.C. (*Adrian Hamilton* with him) for the appellants.

L.A. Blundell, Q.C. (*Ronald Bernstein* and *Christopher Priday* with him) for the respondents.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by —

Lord Guest: This appeal is concerned with the construction of a provision of the Singapore Control of Rent Ordinance, 1953. The respondent landlords claim possession of premises No. 203 South Bridge Road, Singapore, from their tenants, the appellants. There is also a claim for arrears of rent and *mesne* profits. In the High Court at Singapore Chua J. gave judgment for the respondents. His order was unanimously affirmed by the Federal Court of Malaysia.

Section 14 of the Control of Rent Ordinance provides as follows:—

"14. No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Ordinance."

Section 15(1)(*h*), provides:—

"15. (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

. . . . . .

(*h*) where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture;"

The word "knowingly" was added in 1953 as an amendment to the Control of Rent Ordinance, 1947 (section 14(1)(*k*)). The relevant provisions of the Municipal Ordinance are contained in section 144:—

"144. (1) Every person intending to erect any building shall submit to the commissioners plans and specifications of the proposed building prepared in accordance with this Ordinance and the building by-laws. When such plans and specifications are certified by the Municipal Architect or Municipal Engineer to be in accordance with this Ordinance and the building by-laws, they may be approved by the president on behalf of the commissioners.

. . . . . .

(7) No person shall commence any building operations involving the erection of a building or, in the case of any operations the progress whereof has been suspended for a period exceeding three months, resume any such building operations unless:—

(*a*) he has given to the commissioners four days' notice of his intention to commence or resume such operations with particulars of the intended works; and

(*b*) a plan and specification of the building have been approved by the commissioners or the president within one year before the date of the notice.

. . . . . .

(10) Any person who:—

(*a*) commences or resumes building operations in contravention of sub-section (7);

. . . . . .

shall be liable to a fine not exceeding five hundred dollars and to a daily fine of twenty-five dollars for every day on which the offence is continued after conviction . . .

(11) For the purposes of this section and of sections 144B, 145 and 146 a person shall be deemed to erect a building who:—

. . . . . .

(*g*) infringes the provisions of this Ordinance as to buildings or of the building by-laws; or

(*h*) renews or repairs any existing building in such a manner as to involve a renewal, reconstruction or erection of any portion of an outer or party wall to the extent of one storey in height whatever the material of such outer or party wall is . . .

(12) Where any building operations are commenced or carried out in respect of any building, they shall be deemed to have been commenced or carried out by the owner of the land whereon such building is erected and he shall be liable therefor."

Section 392 provides:—

"Except in any case where by reason of the act or omission complained of an injury or danger to health subsists at the date of the complaint no person shall be liable to any fine or penalty under this Ordinance or under any rule or by-law made thereunder for any offence under this Ordinance unless the complaint respecting such offence is made within twelve months next after the commission of such offence."

The Local Government Ordinance, 1957 was passed for the purpose of repealing and re-enacting with amendments the provisions of the Municipal Ordinance (see section 320). Section 169 of the Local Government Ordinance is in similar terms to section 144 of the Municipal Ordinance, but section 320 of the Local Government Ordinance was never brought into effect with the result that at the relevant date both Ordinances were running on parallel courses.

The appellants held the premises of the respondents on a monthly tenancy which tenancy was duly determined by notice to quit expiring on 31st October 1964. The respondents took proceedings for recovery of possession on 1st March 1965. The appellants pleaded that they were protected by the provisions of section 14 of the Control of Rent Ordinance and the respondents pleaded that they were not precluded from obtaining possession by virtue of section 15(1)(*h*).

The oral evidence led for the respondents consisted of a clerk in the Chief Building Surveyor's Department of the Singapore City Council who produced certain plans of alterations proposed to the premises at No. 203 South Bridge Road submitted by the appellants to the Singapore City Council. The only other witness was an architect instructed by the respondents who produced a plan of the alleged offending structures. Interrogatories were administered to the appellants and an agreed correspondence was also produced. No evidence was led for the appellants.

The events commence with a letter, dated 12th September 1960, addressed by Ho Kok Cheong, one of the appellants described as their "Managing Partner", to the respondents' agents in these terms:—

"re: Renovation of premises No. 203 South Bridge Road, Singapore

We would bring your kind attention to the abovementioned matter, as our plans has [*sic*] already been submitted to you through Mr. Tan Kim Hock for your kind perusal and approval.

We shall be much obliged if you be kind enough to approve by duly signing and returning the plans for City Council approval purposes and all the charges will be borne by us."

The plans accompanying this letter were marked P.1 and consisted of: (A) a site plan headed "Permission required under section 9 of the P.O." (Planning Ordinance) "for proposed alteration 1st floor frontage to the premises at 203 South Bridge Road". This was signed on behalf of the tenants and (B) a plan showing ground floor, first floor, section and elevation of the building also signed on behalf of the tenants by Ho Kok Cheong, managing partner. On this plan in section a lean-to roof is shown marked "Unauthorised glass corr: iron lean-to roof to be demolished".

There was no oral evidence as to what happened to those plans after they had been sent to the landlords' agents but from certain stamps and dockets on them it is possible to trace some of their subsequent history. All the plans were approved by the respondents. Plan P.1(A) reached the Chief Building Surveyor's Department on 2nd November 1960 and received a number 366/60. The Competent Authority granted permission for the alteration to the first floor frontage of the premises under the Planning Ordinance on 29th October 1960. Plan P.1(B) reached the Chief Building Surveyor's Department of the City Council on 2nd November 1960 and received the same number 366/60 as plan P.1(A). This plan was approved under the Local Government Ordinance, 1957 on 21st November 1960 by someone signing on behalf of the Chief Building Surveyor for and on behalf of the City Council of Singapore. This plan contained a note in the following terms, so far as legible. "When the work is completed the plan must be returned to the Chief Building Surveyor for signature." There follows below this note: "Work completed as per plan 11-8-61" and the same official signs for the Chief Building Surveyor on 14th August 1961.

A further plan P.2 was also produced similar to P.1(A) with minor variations but containing a different serial number and different dates on the dockets. It appears to have been received by the Chief Building Surveyor's Department on 6th April 1961, approved on 17th May 1961 and the work was shown as completed on 11th August 1961 and signed by the Chief Building Surveyor on 14th August 1961.

Plan P.3 produced by the respondents' architect shows the work done by the appellants which is said to be in breach of the Municipal Ordinance and the building by-laws. These works are detailed in the statement of claim. They consist *inter alia* of the complete covering of the open space at the rear of the building, the reconstruction of the staircase and the construction of a new floor to form a dining area. The appellants admitted that the operations detailed had been done by them on the premises and that these operations were in breach of the provisions of the Municipal Ordinance and the by-laws.

Chua J. found that the appellants "knowingly" permitted breaches of the Municipal Ordinance in terms of section 15(1)(*h*) of the Control of Rent Ordinance and that the respondents were therefore not precluded by the Rent Ordinance from obtaining possession. The question is whether there was evidence to support this finding.

Their Lordships are not at all clear what precise content the trial judge gave to the word "knowingly" in section 15(1)(*h*) and they do not think it helpful to enter into a metaphysical discussion of the meaning of the word "knowingly". In their view it is not necessary that the respondents should show that the appellants knew the precise sections of the Municipal Ordinance, of which they are alleged to be in breach nor indeed that it was "the Municipal Ordinance". Such a construction would largely nullify the protection given to a landlord by section 15(1)(*h*). It is sufficient in their Lordships' view that the tenant knows that his conduct is in breach of some law affecting the regulation of building operations in Singapore. It must, of course, also be shown that his conduct in fact is in breach of the Municipal Ordinance.

Their Lordships can dispose quite briefly of two submissions made in this connection by the appellants' counsel. It was argued that as P.1(A) appears to have been submitted under the Planning Ordinance it could not be said that the appellants knew that permission was necessary under the Municipal Ordinance. However, in their Lordships' view from a consideration of the dockets on the plans it is a reasonable inference that the appellants or their architect acting on their behalf received both plans P.1 and P.2 back with the City Council's approval before the work was commenced. They must therefore have known that approval was necessary at least under the Local Government Ordinance. Moreover P.2 had nothing to do with a planning application, but was presented to the Chief Building Surveyor purely for building approval. It matters not that the approval was given under the Local Government Ordinance which at that date was concurrently in force with the Municipal Ordinance. What does matter is that the appellants knew that approval was necessary from the City Council for their building operations. They must have known that in fact approval had been given for the work shown on plans P.1 and P.2. Therefore they must have known that the offending operations were in breach of some building regulations. This inference can be more readily drawn as the appellants who were in possession of all the relevant information gave no evidence at the trial.

There is a further point which is illustrated by the findings of Chua J.:—

> "In this case the evidence is that in November, 1960, the defendants submitted a plan signed by themselves, their architect and the plaintiffs to the proper authority. The plan was for the alteration to the shop-front of the premises. In April, 1961, an amended plan was submitted. Both these plans show an unauthorised glass corrugated iron lean-to roof over the open area at the back of the premises which was to be demolished. The plans were approved on 21st November, 1960, and 19th May, 1961, respectively. In July, 1961, the defendants carried out the building operations over the open area at the back of the premises knowing full well that a covering over the open area was illegal. There is no doubt about it that the defendants committed the breaches knowingly."

This presumably has reference to by-laws 208 and 209 which necessitated consent of the Municipal Commissioners for the closing in and roofing over of the area at the rear of the premises. In this connection the note on the "section" of P.1(B) and P.2 shows that the appellants must have known before submitting the plans to the Council for approval that the existing lean-to roof was unauthorised. It is a reasonable assumption that they must have had this information from their architect and that they knew that it offended one of the Municipal by-laws. Notwithstanding this knowledge, the appellants proceeded with the offending work of covering the open area. This in their Lordships' view further confirms that the breaches of the relevant Building Regulations were committed with the knowledge of the appellants and amply supports the trial judge's finding.

Their Lordships now proceed to the only remaining point in the case, namely whether assuming the appellants "knowingly" committed breaches of the Municipal Ordinance, these breaches "exposed" the landlords to any penalty or fine within the terms of section 15(1)(*h*) of the Rent Control Ordinance. The singular tense "exposes" is used in the section and an argument for the appellants was advanced that the *punctum temporis* of the exposure is the date when the landlord seeks to recover possession and that at the date of the raising of the action the landlord was no longer responsible for the tenants' actions. Section 144(12) of the Municipal Ordinance was not re-enacted by the Local Government Ordinance, 1957 and was finally repealed by the Local Government Integration Ordinance 1963. This argument, however, was not seriously persisted in and their Lordships consider that there is no foundation for it. The exposure is a qualification of the breach and all that is necessary to show is that under the terms of the Ordinance the breach at the time it was committed exposed the landlord to a penalty (see section 144(12) of the Municipal Ordinance).

It was also contended for the appellants that before a landlord can be exposed to a penalty a prosecution must have been initiated, because until the prosecution is set on foot it cannot be said that the landlord was liable to penalty or fine. Their Lordships consider that there is no substance in this argument. In their view the

courts below rightly rejected it for the reasons given in their judgments.

Their Lordships will dismiss the appeal. The appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Parker Garrett & Co.; Titmuss, Sainer & Webb.*

MAJUMDER v. ATTORNEY-GENERAL OF SARAWAK

[P.C. (Lord Guest, Lord Upjohn and Lord Diplock) January 16, 1969]

[Privy Council Appeal No. 28 of 1967]

Administrative Law — Declaration — Contract of employment — Member of Overseas Civil Service — Whether designated officer — Inducement pay — Prerogative of Government in Council — Declaration cannot be made against person not party to proceedings.

The appellant in this case who had been appointed Medical Officer, Sarawak, claimed three declarations in the High Court as follows:— (a) that he is a member of Her Majesty's Overseas Civil Service; (b) that he is eligible for designation as a designated officer within the meaning of the schedule to the Overseas Civil Service Ordinance; and (c) that it would be unlawful to refuse him benefits such as inducement pay payable to a member of Her Majesty's Overseas Civil Service. At the trial an admission was made on behalf of the respondent that the appellant was a member of Her Majesty's Overseas Civil Service. The High Court ([1966] 1 M.L.J. 41) granted the second declaration and refused the third; the first declaration was not granted as it was held that there was no point in dispute. On appeal, the Federal Court ([1967] 1 M.L.J. 101) affirmed the decision of the learned trial judge as regards the first and third declarations, but further decided that the appellant was not entitled to the second declaration as the designation of an officer as a designated officer was a matter for the Secretary of State of the United Kingdom and as the Secretary of State was not a party to the action, the High Court was wrong in making the declaration that the appellant was a "designated officer". The appellant appealed to the Privy Council.

Held, dismissing the appeal: (1) the learned trial judge was right in exercising his discretion in not making the first declaration but in view of the circumstances there should be a recital that the order was made upon the court taking into account that the respondent conceded that the appellant had been a member of Her Majesty's Overseas Civil Service since December 1, 1958;

(2) as regards the second declaration it was within the discretion of the Secretary of State whether to designate an officer or not, and as the Secretary of State was not a party to the proceedings, the Federal Court was right in holding that the High Court could not make the declaration;

(3) as the question whether an officer is entitled to inducement pay is for the Governor in Council whose decision is final and as on the facts the terms of the contract of employment did not entitle the appellant to inducement pay, the learned trial judge was right in refusing the third declaration.

PRIVY COUNCIL.

E.F.N. Gratiaen, Q.C. (*R.K. Handoo* with him) for the appellant.

Sir Dingle Foot, Q.C. (*Montague Solomon* with him) for the respondent.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by —

Lord Guest: The appellant was born in India in 1926, in Bengal, at Rangpur, which is now part of Pakistan. He obtained his MB, BS, from Calcutta University in 1948. After serving as a medical officer in the Indian Army he proceeded to England in the latter part of 1955 for post-graduate medical studies and he there obtained additional qualifications.

In March 1957 he was serving as Senior House Officer in the General Hospital, Rochford, Essex. While there he noticed an advertisement in the *British Medical Journal* for a post as Medical Officer, Sarawak. This advertisement stated that the appointment would be made on a permanent basis or a short-term contract and that expatriation pay (pensionable) would be payable at various rates. Subsequently, he submitted his application for the post and on his application form he stated that his present address was "C/o. General Hospital, Rochford, Essex", and that his permanent address was "C/o. Mr. K.C. Bose, 7 Central Road, Jadavper, Calcutta-32, India". This was the address of his father-in-law.

After being interviewed for the post he wrote to the Director of Recruitment, Colonial Office, asking that any future communications should be sent to the address in Calcutta on his application form, where he would be going. On 2nd May 1958 he received a letter from the Colonial Office informing him that he had been provisionally selected for appointment and that a formal letter of appointment would soon be sent to him. Eventually a letter dated 12th June 1958 was sent to him offering him an appointment on probation for three years as medical officer, Sarawak at a salary of $1,155. The letter informed him that any addition to his basic salary allowances would be payable at rates shown in the memorandum which was enclosed in the letter.

This memorandum headed "Conditions of Service in Sarawak", after stating the terms of appointment, dealt in paragraph 3 with the allowances which included education allowance, child allowance and outfit allowance. Paragraph 4 was in the following terms:—

"General Conditions of Service. An officer is subject to the General Orders of the Government in which he is serving, and to the Colonial Regulations for the time being in force in so far as the same are applicable. A copy of the current edition of the Colonial Regulations (Part I) is attached. The officer will be required to serve anywhere in Sarawak or in the State of Brunei."

Paragraph 7 was in the following terms:—

"Widows' and Orphans' Pensions: In accordance with the provisions of the Sarawak Widows' and Or-